

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

July 26, 1995

**NOTICE**

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 94-2061**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

**JEROME R. CHRISTENSEN,**

**Petitioner-Appellant,**

**v.**

**CITY OF RACINE POLICE  
AND FIRE COMMISSION,**

**Respondent-Respondent.**

APPEAL from an order of the circuit court for Racine County:  
DENNIS J. BARRY, Judge. *Affirmed.*

Before Brown, Nettesheim and Snyder, JJ.

PER CURIAM. Jerome R. Christensen appeals from a circuit court order affirming the City of Racine Police and Fire Commission's decision to terminate his employment as a City of Racine police officer. We are unpersuaded by Christensen's appellate arguments, and we affirm.

Christensen was a Racine police officer for approximately ten and one-half years prior to his termination. He was convicted of disorderly conduct

in April 1992 as a result of an off-duty altercation with his former wife. In May 1992, Christensen entered into a disciplinary stipulation with Racine police chief Richard Polzin in which he agreed to a twenty-day suspension without pay (with five-days stayed) for having violated the department's conduct rules. The stipulation required Christensen to refrain from similar conduct for the next twelve months.

On March 14, 1993, Christensen was involved in another off-duty incident with his former wife and was again convicted of disorderly conduct. In September 1993, Chief Polzin began termination proceedings against Christensen on the grounds that Christensen had again violated the department's conduct rules requiring "Compliance with the Law" and prohibiting "Unbecoming Conduct."<sup>1</sup> Chief Polzin alleged that Christensen had received a second conviction for disorderly conduct in less than two years and had violated the May 1992 disciplinary stipulation.

After a hearing, the Commission made the following findings. Christensen violated the department's rules of conduct by reason of his most recent disorderly conduct conviction and other unbecoming conduct. The department's internal investigation and investigatory report, which was

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<sup>1</sup> Racine Police Department Manual Procedure 400, Rules of Conduct B-2, "Compliance with the Law," states:

All personnel shall obey all laws (or ordinances) of the United States and of any state and local jurisdiction in which they are present. A conviction of the violation of any law (ordinance) shall be prima facie evidence of a violation of this section. Any member under investigation for violation of the criminal law or laws may be suspended for cause indefinitely or for a time certain by the Chief of Police, depending on the seriousness of the allegations.

Rules of Conduct G(7), "Unbecoming Conduct," states:

Members shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the Department. Conduct unbecoming an officer shall include that which brings the Department into disrepute or reflects discredit upon the officer as a member of the Department, or that which impairs the operations or efficiency of the Department or officer.

evidence at the hearing, documented "a number of incidents demonstrating extremely poor judgment, and overly aggressive and assaultive behavior by" Christensen. Christensen's off-duty conduct reflected negatively on the department, contrary to the conduct rules which require an officer to act off-duty in a manner which reflects favorably on the department. Christensen had received a "measure of leniency" at the time of his first disorderly conduct conviction but "the good of the service" required terminating him. On certiorari review, the trial court affirmed the Commission.

We review whether the Commission's decision to terminate Christensen was reasonable based upon the evidence. See § 62.13(5)(i), STATS., 1991-92;<sup>2</sup> see also *State ex rel. Smits v. City of De Pere*, 104 Wis.2d 26, 31, 310 N.W.2d 607, 609 (1981). Our focus is on whether the Commission acted within its jurisdiction and proceeded on a correct theory of law. See *id.* at 31-32, 310 N.W.2d at 609.

Christensen apparently believes that termination was an extreme sanction. However, he does not contend that the Commission acted outside its jurisdiction or that it lacked the legal authority to terminate him. The question on review is whether terminating Christensen was reasonable under the evidence. The Commission's decision must be supported by substantial evidence, i.e., "evidence of such convincing power that reasonable persons could reach the same decision as the [Commission]." *Clark v. Waupaca County Bd. of Adjustment*, 186 Wis.2d 300, 304, 519 N.W.2d 782, 784 (Ct. App. 1994).

Although Christensen suggests there was no evidence that he could no longer act as a police officer or that he would impair public safety, this was not the standard for termination. The parties stipulated to the admission into evidence of the department's investigatory report and internal investigation as the factual basis for the charges, although Christensen reserved the right to deny or clarify certain of those allegations at the hearing. The record indicates Christensen assaulted his former wife, made numerous harassing phone calls to

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<sup>2</sup> Pursuant to 1993 WIS. ACT 53, § 7, effective November 25, 1993, the court's standard of review of the Commission's decision changed from whether the Commission's decision was reasonable based upon the evidence, § 62.13(5)(i), STATS., 1991-92, to whether there is just cause to sustain the charges against the officer. See § 62.13(5)(i), STATS., 1993-94. As we discuss later, Christensen stipulated that the just cause standard did not apply.

her and her friend, and assaulted and harassed his former girlfriend. During his testimony, Christensen admitted the inappropriate nature of his conduct but sought to place the conduct in the context of a difficult divorce and an alcohol problem. The parties stipulated that Christensen had violated the "Compliance with the Law" and "Unbecoming Conduct" conduct rules. The parties also stipulated that the hearing would be to determine the appropriate disciplinary action.

Because there was substantial evidence that Christensen violated the department's conduct rules, it was reasonable to terminate Christensen.<sup>3</sup> The Commission was not obligated to honor Christensen's request for another suspension in lieu of termination or accept his testimony regarding the reasons for his conduct.

Christensen's appellate briefs address the just cause standard. We disregard this issue for two reasons. First, Christensen stipulated before the Commission that the just cause standard would not apply. The minutes of a telephone prehearing conference held with a Racine Police and Fire Commission commissioner reveal that the parties agreed the just cause standard would not apply because the standard did not go into effect until November 25, 1993. Therefore, Christensen is estopped from arguing the just cause standard on appeal. See *Siegel v. Leer, Inc.*, 156 Wis.2d 621, 628, 457 N.W.2d 533, 536 (Ct. App. 1990).<sup>4</sup>

Second, Christensen waived his argument that the just cause standard in the officers' collective bargaining agreement should have applied because he did not make that argument before the Commission or the trial court. See *Segall v. Hurwitz*, 114 Wis.2d 471, 489, 339 N.W.2d 333, 342 (Ct. App. 1983).

*By the Court.* — Order affirmed.

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<sup>3</sup> After sustaining the charges against Christensen, the Commission had a range of discipline options under § 62.13(5)(e), STATS., including removal "as the good of the service may require."

<sup>4</sup> The trial court's discussion of the just cause standard in its decision was dicta given Christensen's previous agreement that the reasonableness standard would apply.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.